

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEAN POWELL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNITED RENTALS (NORTH AMERICA),
INC.,

Defendant.

No. 2:17-cv-01573 JLR

JOINT STIPULATION AND
~~PROPOSED~~ ORDER FOR
LEAVE TO FILE THIRD
AMENDED COMPLAINT

Plaintiff Sean Powell ("Plaintiff") and Defendant United Rentals ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties"), through their respective counsel, hereby stipulate as follows:

WHEREAS, on October 23, 2017, Plaintiff Ricardo Castillo filed this putative class and collective action, alleging claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA) and Washington state law (ECF 1);

WHEREAS, on March 19, 2018, this Court granted in part, and denied in part, Defendant's motion to dismiss Plaintiff's Complaint, and dismissed Plaintiff's claims for

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1 minimum wage and overtime violations under Washington law and the Fair Labor Standards Act
2 (“FLSA”), and Plaintiff’s claims under the Washington Consumer Protection Act (ECF 30);

3 WHEREAS, on April 3, 2018, Plaintiff Ricardo Castillo filed his First Amended
4 Complaint to revise the factual allegations to specify the exact workweeks wherein Plaintiff
5 Ricardo Castillo was subject to overtime violations (ECF 34);

6 WHEREAS, on April 17, 2018, Defendant filed its Answer to Plaintiff Ricardo Castillo’s
7 First Amended Complaint (ECF 38);

8 WHEREAS, on July 17, 2018, Plaintiff filed his Second Amended Complaint to
9 substitute Plaintiff Ricardo Castillo with Plaintiff Sean Powell as named representative (ECF
10 53);

11 WHEREAS, in the interest of judicial economy and to avoid unnecessary motion
12 practice, the Parties have met and conferred and have agreed to stipulate to leave for Plaintiff to
13 file his Third Amended Complaint;

14 WHEREAS, Plaintiff now seeks leave to file his Third Amended Complaint to revise the
15 factual allegations to specify the exact workweeks wherein Plaintiff was subject to overtime
16 violations;

17 WHEREAS, Plaintiff maintains that there is good cause for leave to amend his operative
18 complaint. Granting leave to amend will facilitate the interest of justice by allowing the Parties
19 to efficiently resolve all disputed issues in this action, including the issue of whether the Second
20 Amended Complaint complies with the Ninth Circuit’s decision in *Landers v. Quality*
21 *Communications, Inc.*, 771 F.3d 638 (9th Cir. 2014). The procedural posture of the case supports
22 amendment, as the Court has vacated the case schedule and a trial date has not yet been set;

23 WHEREAS, a true and correct copy of the proposed Third Amended Complaint is
24 attached hereto as Exhibit 1;

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1 WHEREAS, the Parties agree that the Third Amended Complaint, if permitted to be filed
2 by order of the Court, shall be deemed served upon Defendant on the date this stipulation is
3 approved by the Court;

4 WHEREAS, the Parties further agree that, if this stipulation is approved by the Court,
5 Defendant shall have thirty (30) days from the date that this stipulation is approved by the Court
6 to answer or otherwise respond to the Third Amended Complaint; and

7 WHEREAS, if Defendant does not file a responsive pleading within thirty (30) days as
8 set forth above, Defendant's Answer to the First Amended Complaint filed on April 17, 2018
9 (ECF 38) shall be deemed Defendant's Answer to the Third Amended Complaint.

10 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between
11 the Parties that:

- 12 1. The Parties incorporate by reference, and stipulate to, the above Recitals;
- 13 2. Plaintiff should be granted leave to amend to file his Third Amended Complaint, a true
14 and correct copy of which is attached hereto as Exhibit 1;
- 15 3. The Third Amended Complaint, if permitted to be filed by order of the Court, shall be
16 deemed served upon Defendant on the date this Stipulation is approved by the Court;
- 17 4. If this Stipulation is approved by the Court, Defendant will have thirty (30) days from
18 the date that this Stipulation is approved by the Court to answer or otherwise respond to
19 the Third Amended Complaint; and
- 20 5. If Defendant does not file a responsive pleading within thirty (30) days as set forth in the
21 Stipulation, Defendant's Answer to the First Amended Complaint filed on April 17, 2018
22 (ECF 38) shall be deemed Defendant's Answer to the Third Amended Complaint.

Respectfully submitted this 3rd day of August, 2018.

TERRELL MARSHALL LAW GROUP PLLC DAVIS WRIGHT TREMAINE LLP

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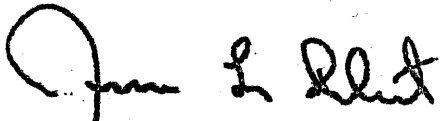
~~PROPOSED~~ ORDER

Pursuant to the accompanying stipulation, and for good cause shown, the Court GRANTS the stipulation.

1. Plaintiff is granted leave to amend to file his proposed Third Amended Complaint, which is deemed filed today;
2. Defendant has thirty (30) days to answer or otherwise respond to the Third Amended Complaint; and
3. If Defendant does not file a responsive pleading within thirty (30) days, Defendant's Answer to the First Amended Complaint filed on April 17, 2018 (ECF 38) is deemed Defendant's Answer to the Third Amended Complaint.

IT IS SO ORDERED.

Dated: August 6th, 2018.



JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 3rd day of August, 2018.

/s/ David C. Leimbach
David C. Leimbach